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7  
8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
9 **FOR THE COUNTY OF LOS ANGELES**  
10

11 HILL RHF HOUSING PARTNERS, L.P., a  
12 California limited partnership; OLIVE RHF  
13 HOUSING PARTNERS, L.P., a California limited  
partnership,

14 Petitioners/Plaintiffs,

15 vs.

16 CITY OF LOS ANGELES; DOWNTOWN  
CENTER BUSINESS IMPROVEMENT  
17 DISTRICT, a special assessment district in the  
City of Los Angeles; DOWNTOWN CENTER  
18 BUSINESS IMPROVEMENT DISTRICT  
MANAGEMENT CORPORATION, a California  
19 nonprofit corporation; and DOES 1 through 10,  
inclusive,

20 Respondents/Defendants  
21

CASE NO. BS170127  
[Assigned to Hon. Amy D. Hogue, Dept. 86;  
Related to Case No. BS170352]

**PLAINTIFFS'/PETITIONERS'**  
**OPENING BRIEF**

[Request for Judicial Notice filed concurrently]

Complaint Filed: July 3, 2017  
Trial Date: September 19, 2018  
Time: 9:30 a.m.  
Dept: Dept. 86

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I.

**PRELIMINARY STATEMENT**

On July 3, 2017, Plaintiffs/Petitioners Hill RHF Housing Partners, L.P and Olive RHF Housing Partners, L.P. (collectively, “RHF”) filed a Petition for Peremptory Writ of Mandate<sup>1</sup> and Complaint for Declaratory and Injunctive Relief (“the Petition”) against the City of Los Angeles (“the City”), the Downtown Center Business Improvement District, and the Downtown Center Business Improvement District Management Corporation (“DCBID” or “the District”) to challenge the propriety of DCBID’s special assessments, which are subject to Article XIII D of the California Constitution, adopted in 1996 by voters, as part of Proposition 218 (“Prop. 218”), to protect taxpayers from local governments seeking to exact revenues without taxpayer consent. *See* Article XIII D Note; *see also Silicon Valley Taxpayers’ Assn., Inc. v. Santa Clara County Open Space Authority*, 44 Ca.4th 431, 443 (2008) (Prop. 218 “buttresses Proposition 13’s limitations on ad valorem property taxes and special taxes by placing analogous restrictions on assessments, fees, and charges).

Broadly speaking, the California Constitution mandates that an assessment be imposed **only** for a “special benefit” conferred on a particular property, defined as “a particular and distinct benefit over and above general benefits conferred on real property located in the district or to the public at large,” and which does not include any general enhancements of property value.<sup>2</sup> *See* Cal. Const., Art. XIII D §§ 2(b) and 4(a). The California Constitution further requires that assessments be proportional to, and no greater than the special benefit conferred on a particular parcel, determined in relation to the cost of the property-related service being

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<sup>1</sup> RHF’s Petition for Peremptory Writ of Mandate is made pursuant to Code of Civil Procedure Section 1085.

<sup>2</sup> Prior to Prop. 218, “courts did not invalidate assessments simply because they provided general benefits to the public in addition to the requisite special benefits, and did not demand a strict separation of special and general benefits . . . [now,] under the plain language of article XIII D, a special benefit must affect the assessed property in a way that is particular and distinct from its effect on other parcels and that real property in general and the public at large do not share.” *Silicon Valley*, 44 Cal.4th at 452.

1 provided. Art. XIII D §§ 4(a) & 2(h) (As used in Article XIII D, “‘Property-related service’  
2 means a public service having a direct relationship to property ownership”). The burden is on  
3 the assessing agency to demonstrate that these constitutional requirements are met. Art. XIII D §  
4 4(f). DCBID’s special assessments are also subject to the Property and Business Improvement  
5 Law of 1994, California Streets and Highways Code, 36600 *et seq.*, whose purpose is, in part, to  
6 ensure that assessments conform to all constitutional requirements. *See* Sts. & High. Code §§  
7 36602 & 36632(a) (assessments “shall be levied on the basis of estimated benefit to the real  
8 property”). Running afoul of this express purpose, on January 1, 2015, the California Legislature  
9 amended the Property and Business Improvement Law of 1994 and redefined special benefits in  
10 a manner not consistent with the California Supreme Court’s interpretation of Article XIII D.  
11 Because DCBID relied on the unconstitutional amendments to the Streets and Highways Code in  
12 levying its assessments, the Court must find that DCBID’s assessments, generally as to all  
13 assessed properties and specifically as to RHF’s properties, are unconstitutional and invalid.

14 DCBID’s assessments fail both prongs of Article XIII D §4(a): (1) DCBID’s  
15 assessments are not based only on special benefits because DCBID fails to properly separate and  
16 quantify the general benefits produced by the Safe and Clean Programs, the Economic  
17 Development/Marketing Programs, and the Management Services, and because DCBID fails to  
18 take into account the fact that RHF’s properties do not benefit in the same manner as other  
19 assessed properties within the District; and therefore (2) DCBID’s assessments are not  
20 proportionate to and exceed the special benefit conferred on RHF’s properties. Specifically, the  
21 Report includes as purported special benefits various quality-of-life and economic enhancements  
22 which, pursuant to the California Constitution, as clarified by the California Supreme Court, do  
23 not constitute special benefits. In RHF’s particular case, these problems are exacerbated because  
24 no consideration was given to the Regulatory Agreements which govern RHF’s properties,  
25 limiting the amount of rent RHF can charge irrespective of DCBID’s services.

26 Additionally, DCBID fails to provide a quantification method that is based on solid,  
27 credible evidence, in part by relying only on square footage to measure special benefits, by  
28 incorrectly limiting the definition of general benefit to exclude that which is conferred onto

1 assessed parcels, parcels outside of the District if non-adjacent or a part of a different PBID, and  
2 by incorrectly defining what constitutes the public at large. The Engineer's Report also  
3 incorrectly assumes that residential parcels will receive the same proportional special benefit as  
4 other more business-oriented parcels. Furthermore, the Report assigns benefit factors which are  
5 solely based on the professional experience of the authoring Engineer, without providing more.  
6 For all of these reasons, RHF's Petition should be granted.

## 7 II.

### 8 STATEMENT OF FACTS

#### 9 A. DCBID & Boundaries

10 DCBID is a property-based assessment district in the City of Los Angeles, which was  
11 established pursuant to the Property and Business Improvement Law of 1994 and levies  
12 property-based assessments on parcels within the District. AR 94. Although DCBID's  
13 boundaries are divided into Zone 1 and Zone 2, no explanation is provided as to why these zones  
14 are given differing assessment rates (\$0.09402326 and \$0.11760888 respectively). AR 118.

#### 15 B. RHF's Properties

16 RHF owns and operates two properties, Angelus Plaza (225 S. Hill Street, Los Angeles  
17 California) and Angelus Plaza North (200 S. Olive Street, Los Angeles California), which are  
18 subject to DCBID's assessments. *See* Petition and Complaint at ¶1; *see also* Exs. 1 and 2 to  
19 Request for Judicial Notice. According to the boundary map provided on Page 14 of the  
20 Engineer's Report, RHF's properties are located in Zone 1. AR 106. Together, RHF's  
21 properties, comprised of five high-rise towers, make up the largest affordable housing  
22 community for seniors in the United States and are home to approximately 1,300 low-income  
23 elderly residents who meet the affordability requirements established by the United States  
24 Department of Housing and Urban Development. *See* Petition and Complaint at ¶1, 3, 11-13; *see*  
25 *also* Exs. 1 and 2 to Request for Judicial Notice. Both Angelus Plaza and Angelus Plaza North  
26 are exclusively used, and required to be used, as low-income housing for senior citizens. *See* Ex.  
27 1 and 2 to Request for Judicial Notice. Pursuant to a Regulatory Agreement and Declaration of  
28 Restrictive Covenants, entered into by and between RHF and the City in 2008, Angelus Plaza



1 and Angelus Plaza North are restricted as “qualified residential rental properties.” *Id.*

2 According to the Engineer’s Report, there are 10 specific categories of parcels which  
3 benefit from DCBID’s programs: (1) office parcels, (2) retail parcels, (3) cultural parcels, (4)  
4 religious parcels, (5) parking parcels, (6) publicly-owned transit parcels, (7) publicly-owned  
5 library parcels, (8) publicly-owned park parcels, (9) publicly-owned office building parcels, and  
6 (10) residential and mixed use parcels. AR 94. Presumably, RHF’s properties would fall under  
7 category (10), residential and mixed-use parcels, which purportedly “benefit from District  
8 programs that provide an enhanced sense of safety, cleanliness and a positive user experience  
9 which in turn enhances the business climate and provides the business offering and attracts new  
10 residents, businesses and District investment.” *Id.*

11 **C. DCBID’s Services**

12 DCBID’s various services, for which RHF’s properties are being assessed, are discussed  
13 in the Engineer’s Report in Section B, entitled “IMPROVEMENTS AND ACTIVITIES.” AR  
14 97-101. For each of the category of services below, the Engineer’s Report provides a description  
15 of the service, as well as a description of how each of the specific categories of parcels will  
16 benefit. Then, in Section E, entitled, “SPECIAL and GENERAL BENEFITS,” the Engineer’s  
17 Report provides further discussion of how assessed parcels are specially benefitted and declares  
18 that “[p]arcels specially benefit from any of the following: [c]leaner sidewalks, [s]treets and  
19 common areas,[r]eal and perceived public safety improvements, [g]reater pedestrian traffic,  
20 [e]nhanced rental incomes, improved business climate, [n]ew business and investment, [and]  
21 [w]ell managed BID programs and services.” AR 110-112. According to Section F, entitled  
22 “COST ESTIMATE,” the Clean and Safe Programs are budgeted at \$3,956,094.79, or 58.54% of  
23 the entire \$6,757,968.13 budget; the Economic Development/Marketing Program is budgeted at  
24 \$1,518,546.14, or 22.47% of the entire budget; and the Management Services are budgeted at  
25 \$1,283,327.20, or 18.99% of the entire budget. AR 116.

26 **1. The Safe Team Program**

27 The Safe Team Program consists of “security services for the individual assessed parcels  
28 located within the District in the form of patrolling bicycle personnel, nighttime vehicle patrol

1 and downtown ambassadors,” and “the special benefit to assessed parcels from these services is  
2 increased commercial activity which directly relates to increases in lease rates, residential  
3 serving business and customer usage.” AR 97. The Engineer’s Report then provides how each  
4 of the ten specific categories of parcels will benefit. *Id.* These benefits include “increase[s] in  
5 pedestrian foot traffic,” “enhanced sense of safety, cleanliness, and a positive user experience,”  
6 and “enhanced business climate, new business attraction, business retention, and business  
7 investment.” *Id.* Specifically as to residential and mixed-use residential parcels, DCBID’s Safe  
8 Team Program benefits those parcels by providing “an enhanced sense of safety, cleanliness and  
9 a positive user experience which in turn enhances the business climate and improves the business  
10 offering and attracts new residents, businesses and District investment.” AR 98.

## 11 **2. The Clean Program**

12 The Clean Program consists of sidewalk cleaning, trash collection, graffiti removal, and  
13 landscape improvement and maintenance. AR 98. The Engineer’s Report provides that “the  
14 special benefit to assessed parcels from these services is increased commercial activity which  
15 directly relates to increases in lease rates and customer usage.” *Id.* As with the Safe Team  
16 Program, the Engineer’s Report goes on to specify each category of parcel and the benefits  
17 conferred to them, all of which are the same as those iterated in the Safe Team Program. AR 98-  
18 99. Specifically as to residential and mixed-use residential parcels, they will “benefit from  
19 District programs that provide an enhanced sense of safety, cleanliness and a positive user  
20 experience which in turn enhances the business climate and improves the business offering and  
21 attracts new residents, businesses and District investment.” AR 99.

## 22 **3. The Economic Development/Marketing Services**

23 As provided on Pages 7 through 9 of the Engineer’s Report, the Economic  
24 Development/Marketing Program consists of “Marketing Collateral,” including newsletters,  
25 public relations materials, information kiosks, a downtown center map, a retail guide, marketing,  
26 materials, website design/operation, property owner communication, annual report/marketing  
27 plan, property owner survey, consumer attitude survey, special events, downtown center  
28 welcome program, convention and visitor program, banners, media relations, and advertising.

AR 100. The Economic Development/Marketing Program also consists of “Downtown Center Business Recruitment and Retention,” which includes targeted business meetings, downtown center brokers program, outlying brokers program, investment media relations, trade show marketing, property managers program, property database development/update, property marketing material, economic studies and planning, and downtown center residential development programs. AR 100-101. The Engineer’s Report justifies the Economic Development/Marketing Programs as follows:

The special benefit to District assessed parcels from these services is increased commercial activity which directly relates to increases in lease rates and enhanced commerce. The special benefit to residential and mixed-use residential parcels is increased occupancy rates and an increase in residential serving businesses such as restaurants and retail stores . . . Residential and mixed-use residential parcels benefit from District programs that provide an increased awareness of District amenities such as retail and transit options which in turn enhances the business climate and improves the business offering and attracts new residents, businesses and District investment.

AR 99-11. The Engineer’s Report further provides, in its “Special Benefit Analysis:”

These activities are tied to and will specially benefit each individual assessed parcel by encouraging business development and investment that generates customer traffic, which directly relates to increases in commercial activity, filling of vacant storefronts and offices and ultimately, increased leased rates for retail and office space . . . This is a benefit to the District because it works to improve the positive perception of the District. Decisions on where to shop, eat, work, and live are largely based on a perception of the place.

AR 112.

#### **4. Management/City Fees/Reserve**

As provided on Page 9 of the Engineer’s Report, DCBID’s assessments include the funds for a professional staff that provides centralized management to oversee DCBID’s services, as well as “office expenses, professional services, organizational expenses such as insurance, the cost to conduct a yearly financial review, City fees to collect and process the assessments, a reserve for uncollectible assessments and depreciation.” AR 101. The Engineer’s Report does not analyze how each category of parcel specially benefits from these administrative services, as it does with the other services. Instead, it simply provides, “The special benefit to parcels from these services is increased commercial activity which directly relates to increases in lease rates and enhanced commerce.” *Id.* A further analysis of the services related to DCBID’s

management is also noticeably missing from the Engineer’s Report’s “Special Benefit Analysis,” found in Section E of the Engineer’s Report. AR 110-112.

**D. The Separation of Special Benefits from General Benefits.**

In Section E, entitled, “SPECIAL and GENERAL BENEFITS,” the Report distinguishes between three different types of general benefit: the general benefit received by (1) the parcels inside of the District, (2) the parcels outside of the District, which are adjacent to the District but not within the boundaries of another adjacent business improvement district, and (3) the public at large. AR 112-114. Section F quantifies the total general benefit calculation as \$64,316.11 or 0.95% of the entire budget. AR 116.

**1. The Parcels Inside of the District**

According to the Report, “Each individually assessed parcel will specially benefit from the cleaner and safer public rights-of way and increased economic activity, thus 100% of the benefits conferred on these parcels are distinct and special in nature and that 0% of the PBID activities provide a general benefit to parcels in the District boundary.” AR 112. In other words, the assessed parcels within the District are concluded not to generally benefit from DCBID’s services. *Id.*

**2. The Parcels Outside of the District**

The Engineer’s Report concludes that there are only 13 parcels which are outside of the District and benefit from DCBID’s services. AR 113. The select 13 are “those parcels that are immediately adjacent to, or immediately across the street from where the PBID services are delivered, and not within the boundaries of another adjacent PBID/BBID.” AR 112-113. Thus, parcels which are not adjacent to DCBID’s boundaries and parcels which are a part of another assessment district are deemed not to benefit from DCBID’s services.

The Report assigns a “relative benefit factor,” to quantify the general benefit received by the 13 parcels described above. AR 113. A relative benefit factor is defined as a basic unit of measure which compares the benefit that parcels within the District receive to parcels outside of the District (e.g., assessed parcels receive a relative benefit factor of 1.0 since they receive “100%” of the special benefit and outside parcels “are assigned a relative benefit factor of less

1 than 1.0 for each PBID activity”). *Id.* The relative benefit factor assigned to Clean and Safe is  
2 0.25. *Id.* The relative benefit factor assigned to the Economic Development/Marketing services  
3 is 0.50, which is “believe[d] to be a conservative estimate.” *Id.* These relative benefit factors are  
4 then used to calculate a “benefit factor,” which is then used to calculate “benefit units,” which is  
5 then used to quantify the general benefit received by the 13 identified parcels outside of the  
6 District – 0.12% of the budget allocated to the Clean and Safe Program and Economic  
7 Development/Marketing Services, or \$6,418.95. *Id.*

### 8 **3. The Public at Large.**

9 The Engineer’s Report includes in its general benefit analysis the general benefit received  
10 by the “public at large,” defined as “those people that are either in the PBID boundary and not  
11 specially benefitted from the activities, or people outside of the PBID boundary that may benefit  
12 from the PBID activities.” AR 114. The public at large, although receiving a benefit from the  
13 Clean and Safe Program, is not considered to benefit from the Economic  
14 Development/Marketing Services. *Id.* Specifically, the Engineer’s Report provides:

15 To calculate the general benefit to the public at large may receive [sic] we  
16 determine the percentage to each PBID activity budget that may benefit the  
17 general public. In this case, the Clean and Safe activities may generally benefit  
18 the public as the general public may appreciate the enhanced level of maintenance  
19 and security as it passes through the Downtown Center PBDI. The Economic  
Development and Marketing activities are tailored to benefit each parcel and are  
not intended to benefit the general public. If there are any public benefits, they  
are incidental and collateral to providing special benefits to the assessed parcels.

20 AR 114. Accordingly, a relative benefit factor of 0.025 was assigned to the Clean and Safe  
21 Program to account for the benefit received by the public at large.<sup>3</sup>

### 22 **E. The Methodology Used to Calculate the Assessments.**

23 Section D of the Engineer’s Report, entitled “PROPORTIONAL BENEFITS,” provides  
24 an explanation of the methodology used to calculate DCBID’s assessments and begins by

25 \_\_\_\_\_  
26 <sup>3</sup> In discussing the relative benefit factor, the Engineer’s Report provides, “There is no  
27 scientific method to determine the relative benefit factors . . . Based on our professional  
experience and the results of previous studies, it is reasonable to conclude that this relative  
benefit factor properly accounts for the general public that is not specially benefitted.” AR 114.

1 declaring:

2 Each identified parcel within the Downtown Center PBID will be assessed based  
3 upon each parcels' unique characteristics in relationship to all other specially  
4 benefitted parcels' characteristics. Due to the proportionate special benefits  
received by each parcel from the PBID services, each parcel will be assessed a  
rate which is commensurate with the amount of special benefits received.

5 AR 107. As provided on Page 15 of the Engineer's Report, "[t]he methodology to levy  
6 assessments upon real property . . . is Assessable Square Footage," defined as "the total of gross  
7 building square footage and/or when applicable, land square footage, plus applicable, assessable  
8 parking square footage for each parcel." *Id.* Thus, according to the Engineer's Report, every  
9 category of parcel, "the retail, cultural, religious, parking, office, publicly-owned transit,  
10 publicly-owned library, publicly-owned parks, publicly-owned office, and residential and mixed-  
11 use residential parcels," receives a special benefit which proportionate value can be calculated by  
12 assessable square footage. *Id.*

13 The Engineer's Report, on Page 16, provides a separate and detailed analysis for parking  
14 structures, given that "parking uses have less daily pedestrian traffic than similarly sized  
15 buildings . . . [and] receive a differing level of special benefit from [DCBID's] improvements  
16 and activities." AR 108.. This analysis recognizes differences among various parking structures  
17 which affect the assessment amount. *Id.* For example, the assessable square footage of  
18 "integrated" parking structures (under, over, or within the building) which are under the same  
19 ownership of the building is excluded from the building's total assessable square footage. *Id.*  
20 Similarly, parking structures which are attached to the building, are under the same ownership as  
21 the building, are on the same parcel as the building, and have less square footage than the  
22 building, will also not be assessed. *Id.* In contrast, non-integrated parking structures which are  
23 not under the same ownership as a building are assessed on land square footage and half of the  
24 parking structure building square footage. *Id.*

25 **F. Procedural Background**

26 The Los Angeles City Council held a noticed public hearing on June 6, 2017, to  
27 determine whether to renew DCBID and levy assessments. ARA 161-162. RHF submitted  
28 ballots opposing DCBID's renewal and assessments. AR 293-294. In light of the ballot



1 tabulation results announced on June 7, 2017 in favor of DCBID’s renewal and assessments, the  
2 City Council adopted Ordinance No. 185006, establishing DCBID and levying its assessments.  
3 AR 168, 255-256. Pursuant to Streets and Highways Code Section 36633, RHF commenced the  
4 instant action on July 3, 2017.

### 5 III.

#### 6 ARUGMENT

7 Article XIII D Section 4(f) expressly provides that the burden is on the assessing agency  
8 “to demonstrate that the property or properties in question receive a special benefit over and  
9 above the benefits conferred on the public at large **and** that the amount of any contested  
10 assessment is proportional to, and no greater than, the benefits conferred on the property or  
11 properties in question.” (emphasis added). “Proposition 218 was intended to make it more  
12 difficult for an assessment to be validated in a court proceeding.” *Silicon Valley*, 44 Cal.4th at  
13 445; *see also Beutz v. County of Riverside*, 184 Cal.App.4th 1516, 1524 (2010). Accordingly,  
14 the burden is on DCBID to show that its assessments comply with the California Constitution.  
15 And because this matter requires constitutional interpretation, or mixed questions of law and fact  
16 that implicate constitutional rights, the Court must exercise its independent judgment in  
17 reviewing DCBID’s compliance with the law. *See Silicon Valley*, 184 Cal.App.4th at 448-49;  
18 *see also Beutz*, 184 Cal.App.4th at 1529 (“[N]o deference is owed to any of the [assessing  
19 agency’s] determinations”)

20 Special assessments are not valid unless they are in compliance with Article XIII D of the  
21 California Constitution. *See Silicon Valley*, 44 Cal.4th at 450-58. Section 4 of Article XIII D of  
22 the California Constitution contains the requirements for assessments, and Section 2 contains the  
23 definitions of terms used in Article XIII D. In relevant part, Section 4(a) provide as follows:

24 An agency which proposes to levy an assessment shall identify all parcels which  
25 will have a special benefit conferred upon them and upon which an assessment  
26 will be imposed. The proportionate special benefit derived by each identified  
27 parcel shall be determined in relationship to the entirety of the capital cost of a  
28 public improvement, the maintenance and operation expenses of a public  
improvement, or the cost of the property related service being provided. No  
assessment shall be imposed on any parcel which exceeds the reasonable cost of  
the proportional special benefit conferred on that parcel. Only special benefits are  
assessable, and an agency shall separate the general benefits from the special

benefits conferred on a parcel. Parcels within a district that are owned or used by an agency, the State of California or United States shall not be except from assessment unless the agency can demonstrate by clear and convincing evidence that those publicly owned parcels in fact receive no special benefit.

In turn, Section 2(i) provides:

“Special benefit” means a particular and distinct benefit over and above general benefits conferred on real property locate in the district or to the public at large. General enhancements of property value does not constitute “special benefit.”

Taken together, these sections “tighten[] the definition[s] of two key findings necessary to support an assessment: special benefit and proportionality.” *Silicon Valley*, 44 Cal.4th at 443. Constitutional compliance must be supported by a detailed engineer’s report.<sup>4</sup> Cal. Const. Art. XIII D § 4(b).

In *Silicon Valley*, the California Supreme Court invalidated a special assessment district, Santa Clara’s open space authority, and its county-wide assessments, finding that the assessing agency failed to meet its constitutional burden of demonstrating that its assessments were based only on special benefits and that the assessments were in proportion to those special benefits.<sup>5</sup> *Id.* at 452, 457-58. The noncompliant engineer’s report in *Silicon Valley* enumerated seven “special benefits” that would be conferred on all residents and property owners in the district: (1) enhanced recreational activities and expanded access to recreational areas; (2) protection of views, scenery, and other resources; (3) increased economic activity; (4) expanded employment opportunity; (5) reduced costs of law enforcement, health care, fire prevention, and natural disaster response; (6) enhanced quality of life and desirability of the area; and (7) improved water quality, pollution reduction, and flood prevention. *Id.* at 453. The Court held that every

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<sup>4</sup> The benefits which the California Supreme Court held are invalid resemble the benefits which the recent amendments to the Streets and Highways Code categorize as special benefits. For example, Section 36601(e) of the Streets and Highways Code provides that crime reduction, job creation, business attraction, business retention, economic growth, and new investments constitute special benefits. However, the Supreme Court held that increased economic activity, expanded employment opportunity, and enhanced quality of life and desirability of the area do not constitute special benefits.

<sup>5</sup> Although *Silicon Valley* is the only California Supreme Court case instructing on Article XIII D, the Engineer’s Report, in Section A, entitled, “LEGISLATIVE AND JUDICIAL REVIEW,” omits any reference to this authority. AR 94-96.



1 single one of these purported “special benefits” failed to comply with Article XIII D and were in  
2 fact general benefits. *Id.* at 454.

3 Specifically as to the special benefit of increased economic activity and expanded  
4 employment opportunity, the Court provided:

5 [T]he report states that increased economic activity and expanded employment  
6 opportunity will result from the acquisition of additional open space because  
7 increased recreational opportunities will likely attract more people to the county.  
8 These people, in turn will patronize county services and business, thereby  
9 fostering economic growth and “additional employment opportunities for OSA  
10 residents. The report broadly concludes that the increase economic activity in the  
area is “a benefit ultimately to residential, commercial, industrial and institutional  
property.” However, it simply assumes that the resultant increased activity will  
affect people and property throughout the county equally, but makes no direct  
connection to any particular properties.

11 *Id.* at 453-54. It should be noted that the Court criticized the engineer’s report for failing to tie  
12 the purported special benefit to any particular property and for simply assuming that the expected  
13 increase in economic activity would affect people and property equally. *Id.*

14 Specifically as to the special benefit of enhanced quality of life and desirability of the  
15 area, the Court provided:

16 Although it is reasonable to conclude that quality-of-life benefits to *people* living  
17 in, working in, and patronizing businesses in the district will, in turn, benefit  
18 property in the district, such derivative benefits are only “general benefits  
19 conferred on real property located in the district or to the public at large” . . .  
Moreover, to the extent that the value of property located in a desirable  
community is enhanced, this is a “[g]eneral enhancement of property value,” and  
is thus, by definition *not* a special benefit.

20 *Id.* at 454. Thus, the Court concluded that economic enhancements, quality-of-life benefits, and  
21 derivative, indirect benefits do not constitute special benefits. *Id.* at 453-54. And because none  
22 of the enumerated benefits constituted special benefits, the assessing agency failed to base its  
23 assessments on special benefits, much less only special benefits. *Id.* at 457-58.

24 The California Supreme Court’s analysis is critical given that the special benefits  
25 enumerated by the Engineer’s Report in the instant case are similar to those enumerated in  
26 *Silicon Valley* (e.g., increased economic activity, expanded employment opportunity, and  
27 enhanced quality of life and desirability of the area).

1     **A.     DCBID’s Assessments Are Invalid Pursuant to Article XIII D Because They Rely on**  
2     **Unconstitutional Amendments to the Streets and Highways Code.**

3             [C]learly established rules of constitutional interpretation require that a  
4     term used in a constitutional amendment must be construed according to the  
5     meaning it had when the amendment was adopted. The Legislature cannot  
6     expand the meaning of the amendment by subsequent legislation, since such an  
7     expansion would be equivalent to a constitutional amendment.

8     *See Nunes Turfgrass, Inc. v. County of Kern*, 111 Cal.App.3d 855, 862 (1980) (citing *Forster*  
9     *Shipbldg. Co. v. County of L.A.*, 54 Cal.2d 450, 456 (1960); *Stribling’s Nurseries, Inc. v. County*  
10    *of Merced*, 232 Cal.App.2d 759, 762 (1965)); *see also Sail’er Inn, Inc. v. Kirby*, 5 Cal.3d 1  
11    (1971) (reviewing the exercise of quasi-judicial power, finding that the statute on which the  
12    quasi-judicial power relied was unconstitutional, and ordering the issuance of a peremptory writ  
13    of mandate); *Sonoma County Org. of Public Employees v. County of Sonoma*, 23 Cal.3d 296  
14    (1979) (finding that Cal. Gov’t Code Section 16280 violated Article XI of the California  
15    Constitution and issuing a peremptory writ of mandate).<sup>6</sup>

16             DCBID’s Report does not adequately demonstrate that the assessed properties will  
17    receive a special benefit because, rather than relying on the California Supreme Court’s  
18    constitutional interpretation of what constitutes a special benefit, DCBID relies on recent updates  
19    to the California Streets and Highways Code which contradict the Supreme Court’s findings.  
20    Specifically, the material changes are January 1, 2015 amendments to section 36601 and a  
21    January 1, 2015 addition of section 36615.5 to the Streets and Highways Code. In relevant part,  
22    the amended portion of section 36601(e) states, “Property and business improvement districts  
23    formed throughout this state have conferred special benefits upon properties and businesses  
24    within their districts and have made those properties and businesses more useful by providing the

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25             <sup>6</sup> The issue in *Nunes* was whether the Legislature had the authority to extend the  
26    constitutional “growing crops” tax exemption (contained in Section 3(h) of Article XIII of the  
27    California Constitution) to turf grass by enacting California Revenue and Tax Code section  
28    202.1. *Nunes*, 111 Cal.App.3d at 857. Looking to both the historical purpose behind the  
29    adoption of the subject constitutional provision and the California Supreme Court’s clarification  
30    of that provision, the *Nunes* court determined that the Legislature’s enactment was an invalid and  
31    ultra vires act.

1 following benefits: (1) Crime reduction; (2) Job creation; (3) Business attraction; (4) Business  
2 retention; (5) Economic growth; and (6) New investments.” Section 36601(h)(2) provides:

3       Activities undertaken for the purpose of conferring special benefits upon property  
4       to be assessed inherently produce incidental or collateral effects that benefit  
5       property or persons not assessed. Therefore, for special benefits to exist as a  
6       separate and distinct category from general benefits, the incidental or collateral  
7       effects of those special benefits are inherently part of those special benefits. The  
8       mere fact that special benefits produce incidental or collateral effects that benefit  
9       property or persons not assessed does not convert any portion of those special  
10       benefits or their incidental or collateral effects into general benefits.

11       Section 36615.5 similarly provides that “special benefit” includes “incidental or collateral effects  
12       that arise from the improvements, maintenance, or activities of property-based districts even if  
13       those incidental or collateral effects benefit property or persons not assessed.”

14       Section 36601(e) thus statutorily provides that economic enhancements constitute special  
15       benefits, and section 36615.5 statutorily concludes that derivative and indirect benefits to people  
16       and properties not assessed do not constitute general benefits. However, the Supreme Court of  
17       California has clarified in *Silicon Valley* that economic enhancements, quality-of-life benefits,  
18       and derivative, indirect benefits do not constitute special benefits. *See Silicon Valley*, 44 Cal.4th  
19       at 453-454. Additionally, as discussed above, Article XIII D was designed “to significantly  
20       tighten the kind of benefit assessments an agency can levy on real property and to protect  
21       taxpayers by limiting the methods by which local governments exact revenue from taxpayers  
22       without their consent.” *Silicon Valley*, 44 Cal.4th at 438. Thus, the January 1, 2015 amendments  
23       (1) contradict the California Constitution as interpreted by the California Supreme Court; and (2)  
24       expand the government’s ability to levy broad assessments without taxpayer consent,  
25       circumventing the intended constitutional limitations placed on special assessments. *See Nunes*,  
26       111 Cal.App.3d at 863 (1980) (“**Although the Legislature can clarify constitutional**  
27       **amendments of doubtful or obscure meaning . . . it cannot transcend the meaning intended**  
28       **by the constitutional framers**”) (emphasis added). Accordingly, the Court not only must not  
rely on the unconstitutional January 1, 2015 amendments in determining whether DCBID’s  
assessments are valid, but must also find that DCBID’s assessments, levied in reliance of these  
unconstitutional changes, are invalid.

1 **B. DCBID’s Assessments Are Invalid Pursuant to Article XIII D.**

2 In (1) relying on the unconstitutional amendments to the Streets and Highways Code by  
3 characterizing quality-of-life and economic general benefits as special benefits and by  
4 characterizing incidental and collateral effects of special benefits as special benefits, and (2) not  
5 relying on the California Supreme Court’s interpretation of Article XIII D, the Engineer’s Report  
6 mischaracterizes certain general benefits as special benefits, and therefore DCBID fails both  
7 substantive prongs of Article XIII D Section 4(a).

8 **1. DCBID’s Assessments Are Not Based Only On Special Benefits.**

9 **a. The Report Mischaracterizes Certain Benefits Produced by the Clean**  
10 **and Safe Programs as Special Benefits When They are Actually**  
11 **General Benefits.**

12 The Engineer’s Report incorrectly identifies what special benefit will be conferred on the  
13 assessed parcels by the Safe Team Program Services. The Report provides, “The special benefit  
14 to assessed parcels from these [security] services is increased commercial activity which directly  
15 relates to increases in lease rates, residential serving businesses and customer usage.”  
16 Specifically addressing residential and mixed-use residential parcels, the Engineer’s Report  
17 provides that “the District programs [will] . . . provide an enhanced sense of safety, cleanliness  
18 and a positive user experience which in turn enhances the business climate and improves the  
19 business offering and attracts new residents, businesses and District investment.” According to  
20 the recent unconstitutional amendments to the Streets and Highways Code, specifically Section  
21 36601(e), the above-described benefits of economic growth and business attraction and retention  
22 purportedly constitute special benefits. However, what the Report is actually describing are  
23 general benefits. As the Supreme Court has held, general economic and quality-of-life  
24 enhancements do not constitute special benefits. Further, to the extent that these listed benefits  
25 constitute “general enhancements of property value,” section 2(i) of Article XIII D explicitly  
26 states that such increases in property value do not constitute a direct and particular special  
27 benefit. Moreover, the benefits described cannot be guaranteed and are rather projections as to  
28 the subsequent and bigger-picture rippling effects of the services, and therefore, do not constitute

1 special benefits. The issue with the Report’s misidentification of the benefits goes to the  
2 adequate separation of the benefits so as to ensure that when calculating the proportional special  
3 benefit amount, the proportional general benefit amount is not included – so that any assessments  
4 are in proportion to and do not exceed the special benefits conferred. In other words, DCBID  
5 failed to limit its assessments to special benefits only. For the Clean Program, the Engineer’s  
6 Report repeats the same special benefit language found in the Safe Team Program section. As  
7 discussed above, the above-quoted statement describes general benefits and not special benefits  
8 and cannot be used to calculate a proper assessment.

9 **b. The Report Does Not Adequately Describe What Special Benefits will**  
10 **be Provided by the Economic Development/Marketing Services.**

11 The various economic development and marketing programs listed in DCBID’s Report  
12 do not constitute a “special benefit” within the meaning of section 2(i) of Article XIII D.  
13 DCBID intends to impose annual assessments to fund “a professionally developed marketing,  
14 communication and economic development program,” which would “communicate the changes  
15 that are taking place in DCBID and . . . enhance the positive perception of DCBID parcels.”  
16 Specifically addressing “residential and mixed-use residential parcels,” the Report claims that the  
17 marketing and economic development programs will benefit those properties by providing “an  
18 increased awareness of District amenities such as retail and transit options which in turn  
19 enhances the business climate and improves the business offering and attracts new residents,  
20 businesses and District investment.”

21 The programs are clearly intended more for the public at large than they are for specific  
22 parcels. The programs are intended to broadly benefit all *people*, within and/or not within the  
23 District, and derivatively and indirectly benefit the *properties*. Ironically, however, the  
24 Engineer’s Report fails to recognize the existence of general benefits conferred to the public at  
25 large from these marketing and public relations services. Further, the Report assumes that an  
26 increase in publicity will affect people and property equally. However, as the Supreme Court  
27 noted in *Silicon Valley*, “Although it is reasonable to conclude that quality-of-life benefits to  
28 people living in, working in, and patronizing businesses in the district will, in turn, benefit

1 property in the district, such derivative benefits are only general benefits conferred on real  
2 property located in the district or to the public at large.” *Silicon Valley*, 44 Cal.4th at 454. The  
3 Report’s reliance on recent amendments to the Streets and Highways Code – Section 36601(e),  
4 Section 36615.5, and 36601(h)(2), which unconstitutionally expand the definition of special  
5 benefits – runs counter to the findings in *Silicon Valley*.

6 With regard to residential parcels specifically, the Report fails to distinguish how the  
7 difference in the nature of residential parcels’ usage to the nature of commercial parcels’ usage  
8 will affect the proportional special benefit calculation. For example, a commercial parcel will  
9 likely benefit more from programs, such as “Economic Studies and Planning” or “Trade Show  
10 Marketing,” than a residential parcel would. This difference should be – but is not – accounted  
11 for in the assessment amount of any residential parcel, much less RHF’s nonprofit residential  
12 parcels. Given that the economic development and marketing programs are targeted to  
13 specifically improve business conditions, it is unclear based on the Engineer’s Report how these  
14 programs will directly benefit residential properties in such a way that they are considered  
15 special benefits and in such a way that residential properties will receive the same amount of  
16 special benefit as will commercial properties. And to the extent that the marketing services  
17 make the properties in the District more desirable – and the Engineer’s Report does indeed  
18 conclude they make the District more desirable – any enhancement of property value, by  
19 definition, is not a special benefit. *See* Art. XIII D §2(h)

20 Based on the kind of “economic” and “public relations” focused language found  
21 throughout the Engineer’s Report, it is clear that DCBID’s assessments are intended to fund what  
22 amounts to a PR campaign which should not be charged against property owners, much less  
23 those which provide low-income housing to senior citizens and do not benefit in the same  
24 amount or manner from marketing services as other commercial or business-oriented parcels.

25 **c. The Report Fails to Identify What Special Benefits the Assessed**  
26 **Parcels will Receive From the Management Services.**

27 Although DCBID’s assessments will include a certain amount to fund the management  
28 staff that will oversee the services, the Report improperly does not provide a benefit character



1 analysis for these services. Included in the management services amount are “office expenses,  
2 professional services, organizational expenses, the cost to conduct a yearly financial review, City  
3 fees to collect and process the assessments, a reserve for uncollectible assessments and  
4 depreciation.” The Report does not separate what portion of these funds will come from the  
5 special assessments. Because the Report includes this amount in the budget but does not analyze  
6 from what source the funds will be acquired, it appears that assessed parcels will assume the  
7 entire cost of maintaining the management services which will be used to provide both special  
8 and general benefits. However, because there are general benefits stemming from DCBID’s  
9 programs, the management service funds should not be sourced completely from the special  
10 assessments. Thus, DCBID’s assessment, which would include the entire maintenance service  
11 amount, would therefore be unconstitutional because Article XIII D requires that an assessment  
12 be imposed only for a special benefit conferred on the assessed property. In other words, the  
13 Report fails to comply with PBID law because it fails to provide a benefit character analysis for  
14 the management services.

15 **2. DCBID Failed to Separate the General Benefits from the Special Benefits.**

16 Article XIII D demands a strict separation of the special and general benefits produced by  
17 DCBID’s special services. *See Silicon Valley*, 44 Cal.4th at 452 (noting that prior to the  
18 adoption of Article XIII D, “courts did not invalidate assessments simply because they provided  
19 general benefits to the public in addition to the requisite special benefits, and did not demand a  
20 strict separation of special and general benefits”). This is so because only special benefits are  
21 assessable, and DCBID’s services provide both general benefits to the Downtown Los Angeles  
22 community and special benefits to each assessed parcel, requiring DCBID to “separate the  
23 general benefits from the special benefits conferred on [each particular] parcel” in order to  
24 calculate assessments which only include special benefits. *Id.* at 443; *see also* Art. XIII D §4(a).

25 General benefit includes the general benefit received by the assessed parcels **within** the  
26 assessment district. *Silicon Valley*, 44 Cal.4th at 454-55. In *Silicon Valley*, the general benefit  
27 received by the assessed properties was not considered in the quantification of general benefit by  
28 the assessing agency. *Id.* The Court stated, “This distinction finds no support in the

1 Constitution. . . [G]eneral benefits are not restricted to benefits conferred only on persons and  
2 property outside the district.” *Id.* at 455. Because the engineer’s report in *Silicon Valley*  
3 assumed that people and property within the district would receive no general benefit at all – and  
4 receive only special benefits – the report’s final determination of the general to special benefit  
5 ratio as 10 percent general and 90 percent special, was inadequate. *Id.* In other words, the report  
6 failed to adequately separate and quantify the special and general benefits and thus failed to limit  
7 the assessment to special benefits. *Id.* Furthermore, the Court instructed that “at large” means  
8 “not limited to any particular person,” which by definition includes assessed people and  
9 properties *within* the assessment district. *Id.*

10 Here, the Report distinguishes between three different types of general benefit: the  
11 general benefit received by (1) the parcels inside of the District, which the report faultily  
12 concludes receives **zero** general benefit; (2) the parcels outside of the District, but which are  
13 immediately adjacent to the District and not within the boundaries of another adjacent business  
14 improvement district (according to the Report, there are only 13 such parcels); and (3) the public  
15 at large, which the Report incorrectly defines as, “those people that are either in the PBID  
16 boundary and not specially benefitted from the activities, or people outside of the PBID  
17 boundary that may benefit from the PBID activities . . . . In the case of the Downtown Center  
18 PBID, the public at large are those people that are within the PBID boundary that do not pay an  
19 assessment and do not specially benefit from the PBID activities.” In other words, the Report  
20 incorrectly reasons that because an assessed parcel will receive a special benefit, it therefore will  
21 not receive a general benefit. The Report uses this faulty assumption to discount any general  
22 benefit received by the assessed parcels and any general benefit received by those outside of the  
23 District that are a part of another assessment district, whether or not that parcel actually receives  
24 a special benefit or not and regardless of whether the services of the other district are the same or  
25 not. However, “public at large” is not limited to parcels which do not receive a special benefit  
26 and parcels which do not belong to another assessment district. “Public at large,” is much  
27 broader and is not limited to any particular person. Therefore, the Report’s definition of “general  
28 benefit” does not capture what was intended by Article XIII D to constitute general benefit, and



the District’s assessments will not be properly limited to special benefits.

**3. DCBID Failed to Consider RHF’s Properties’ Unique Circumstances in Levying its Assessments.**

As a nonprofit provider of low-income housing to senior citizens, RHF and its use of Angelus Plaza and Angelus Plaza North, subject to Regulatory Agreements with the City, should have been analyzed differently from other District parcels. Pursuant to these agreements, RHF cannot lease space at market prices. *See* Regulatory Agreements at 10 (“[N]o less than 40% of the total number of completed units of [RHF’s residential property] shall at all times be rented to and occupied by Low Income Tenants”) and 22-23 (“Rent Restrictions”).

As a result, RHF’s properties do not benefit in the same manner or amount as commercial properties, as well as other residential properties, which can and most certainly do lease space at market rents. Specifically as to the Safe and Clean Programs, although RHF’s properties will admittedly specially benefit some from increased safety and cleanliness, they will not benefit from these services to the extent that they confer on commercial and other residential properties the special benefits of “enhanced business climate, new business attraction, business retention, and increased business investment.” And as to the Economic Development/Marketing Programs, RHF’s properties will not benefit in the same manner or amount, if at all, from the special benefits of increased occupancy rates or enhancements of the business climate, which purportedly would attract new residents, businesses and District investment.

Because DCBID makes no distinction between RHF’s properties and the other parcels (such as the Grand Central Market, across the street from RHF’s properties), which would surely benefit from increases in pedestrian foot traffic and economic enhancements (putting aside the fact that the California Constitution expressly defines special benefits to exclude any general enhancements of economic value), DCBID’s assessments on RHF’s properties are not based on and exceed the special benefits conferred on RHF’s properties.

**C. The Report Fails to Provide a Quantification Method That is Based on Solid, Credible Evidence.**

In order to limit an assessment to special benefits, the assessing agency must (1) separate

1 special benefits from general benefits by explaining the nature and extent of each, and (2)  
2 quantify both based on **solid, credible evidence**. *Beutz*, 184 Cal.App.4th at 1534 (emphasis  
3 added); *see also Golden Hill Neighborhood Assn., Inc. v. City of San Diego*, 199 Cal.App.4th  
4 416, 436-37 (2011) (agreeing with “the *Beutz* court’s repeated emphasis that the general and  
5 special benefits conferred on real property by service or improvement for which a special  
6 assessment is to be levied must be *separated and quantified*). In the *Beutz* case, one of the  
7 reasons why the engineer’s report failed to comply with Article XIII D was that the report failed  
8 to address whether assessed residents who live in close proximity to the proposed improvement  
9 may reasonably be expected to use the improvement just as often as the assessed residents who  
10 live several miles away from the improvements. *Beutz*, 184 Cal.App.4th at 1532. Thus, the  
11 Report “fail[ed] to explain the nature and extent of the general and special benefits of the parks  
12 or quantify both in relation to each other based on credible, solid evidence.” *Id.* at 1534.

13       Like the report in *Beutz*, the DCBID’s Report fails to rely on “solid, credible evidence,”  
14 in its quantification analysis. In Section D, titled “PROPORTIONAL BENEFITS,” the Report  
15 provides that special benefits conferred on an assessed parcel (apart from parking parcels and  
16 vacant/undeveloped land parcels) are quantified by the parcel’s assessable square footage, which  
17 is “the total of gross building square footage and/or when applicable, land square footage, plus  
18 applicable assessable parking square footage for each parcel.” Thus, the Report’s special benefit  
19 quantification methodology does not differentiate between the different uses of different parcels  
20 of land (e.g., the difference in usage in residential parcels verses retail parcels). Then in Section  
21 E, titled, “SPECIAL and GENERAL BENEFITS,” the Report distinguishes between three  
22 different types of general benefit: the general benefit received by (1) the parcels inside of the  
23 District, (2) the parcels outside of the District, which are adjacent to the District but not within  
24 the boundaries of another adjacent business improvement district, and (3) the public at large. In  
25 addition to incorrectly limiting the definition of general benefit, as discussed above, the Report  
26 also fails to provide solid, credible evidence to support its assessment calculation methodology,  
27 even assuming that its separation of the special and general benefits was correct.

28       **1. The Parcels Inside the District.**

1           The Report incorrectly concludes that if a parcel specially benefits from the District’s  
2 services, then it cannot generally benefit from those services. According to the Report, “Each  
3 individually assessed parcel will specially benefit from the cleaner and safer public rights-of way  
4 and increased economic activity, thus 100% of the benefits conferred on these parcels are distinct  
5 and special in nature and that 0% of the PBID activities provide a general benefit to parcels in  
6 the District boundary.” The Report bases its all-or-nothing quantification on the false logic that  
7 if a parcel receives the special benefit it cannot receive a general benefit. However, special and  
8 general benefits are not mutually exclusive, pursuant to Article XIII D, which states that a  
9 “special benefit” is a “particular and distinct benefit over and above general benefits conferred  
10 on real property located *in the district or* to the public at large.” Thus, properties located in the  
11 district may receive both special and general benefits, and the Report fails to provide solid,  
12 credible evidence to support its conclusion that in the District’s case, the benefits are mutually  
13 exclusive.

14           **2.       The Parcels Outside the District Which are Immediately Adjacent to the**  
15           **District and not Within Another Assessment District.**

16           In addition to excluding any general benefit received by the assessed parcels in its  
17 quantification of general benefit, the Report also provides a faulty method with which to  
18 calculate the general benefit received by “those parcels that are immediately adjacent to, or  
19 immediately across the street from where the PBID services are delivered, and not within the  
20 boundaries of another adjacent PBID/BBID.” The Report reasons, “Parcels that are adjacent to  
21 the Downtown Center PBID and within another PBID/BBID boundary are already receiving  
22 special benefit from their PBID/BBID activities and thus not generally benefitted from the  
23 Downtown Center PBID activities.” Thus, the Report makes the questionable assumption that if  
24 a parcel is assessed by a different business improvement district, then it cannot receive a benefit  
25 from DCBID’s services. The fact that a parcel belongs to a different district does not affect  
26 whether the parcel receives a general benefit because the definition of “public at large” does not  
27 exclude those parcels which are a part of another district boundary.

28           The method is also faulty because the Report assigns a “relative benefit factor” to

1 quantify the general benefit but fails to provide an adequate explanation as to why or how a  
2 specific factor is assigned. Without more, the Report states, “*based on our experience*,  
3 Economic Development/Marketing receives a relative benefit factor of 0.50 which we believe to  
4 be a conservative estimate.” Similarly, with regard to the Clean and Safety services, the report  
5 states, “*Based on our experience* the relative benefit factor for Clean and Safe is 0.25.” Rather  
6 than provide solid, credible evidence, the Report relies – and expects the assessed properties to  
7 rely – on nothing but their “experience.” The Report then uses the respective relative benefit  
8 factors to determine the service’s respective “benefit factors,” which is then multiplied by 13 –  
9 the number of parcels which are adjacent to the District but are not a part of another assessment  
10 district. Overall, the Report’s methodology is deficient in reasoning, much less solid, credible  
11 evidence.

### 12 3. The Public at Large.

13 The Report defines “public at large” to mean “those people that are either in the PBID  
14 boundary and not specially benefitted from the activities, or people outside of the PBID  
15 boundary that may benefit from the PBID activities.” Thus, people within the District who  
16 supposedly specially benefit from DCBID’s services are deemed not to receive general benefits.  
17 This is flawed, however, because special benefit is defined in Section 2(i) of Article XIII D as “a  
18 particular and distinct benefit over and above the general benefits conferred on *real property*,”  
19 and *people* do not receive special benefits and the benefits *people* receive are general benefits  
20 (emphasis added).

21 The Report concludes, “The Economic Development and Marketing activities are tailored  
22 to benefit each parcel and are not intended to benefit the general public. If there are any public  
23 benefits, they are incidental and collateral to providing special benefits to the assessed parcels.”  
24 Based on this conclusion, the Report does not provide a method with which to calculate the  
25 general benefit generated by the marketing services. The Report’s language mimics recently  
26 added Streets and Highways Code section 36615.5, which provides that “special benefit”  
27 includes “incidental or collateral effects that arise from the improvements, maintenance, or  
28 activities of property-based districts even if those incidental or collateral effects benefit property

1 or persons not assessed.” However, this definition of “special benefit” runs contrary to the  
2 *Silicon Valley* ruling that derivative and indirect benefits do not constitute special benefits.  
3 Furthermore, if benefits were separated and quantified pursuant to the definition provided in  
4 section 36615.5, then services which produce special benefits could potentially never produce  
5 general benefits and local governments could avoid ever taking into account the general benefit  
6 received by the public at large when imposing assessments.

7 As to the Clean and Safety programs, the Report assigns a Relative Benefit Factor of  
8 0.025 and states, “There is no scientific method to determine the relative benefit factors, however  
9 in our professional experience of over 50 years as a Registered Civil Engineer and the results of  
10 previous studies conducted to determine a relative benefit factor for the general public in Los  
11 Angeles and other jurisdictions the general public receives a relative benefit factor of 0.025  
12 (2.50%) . . . Based on our professional experience and the results of previous studies, it is  
13 reasonable to conclude that this relative benefit factor properly accounts for the general public  
14 that is not specially benefitted.” Although the Report attempts to justify the Relative Benefit  
15 Factor on “our professional experience,” the Report ultimately fails to base its estimate on any  
16 solid, credible evidence.

17 **D. The Report Fails to Provide Solid, Credible Evidence as to Whether Residential**  
18 **Parcels Receive the Same Proportion of Special Benefit as Other Parcels.**

19 According to the Report, the purpose of the District is to encourage commerce,  
20 investment, and business activities. In light of DCBID’s focus on business concerns, the Report  
21 is incorrect to assume that residential parcels will receive the same proportional special benefit as  
22 other more business-oriented parcels. Despite this, the Report fails to analyze, much less  
23 acknowledge, this issue. Thus, if assessed, residential parcels will be assessed an amount that is  
24 greater than the proportion of special benefit conferred on them, in violation of section 4(a) of  
25 Article XIII D.

26 **E. Because DCBID’s Assessments Are Not Valid, They Are Taxes, From Which RHF is**  
27 **Exempt.**

28 In *Silicon Valley*, the Supreme Court agreed with the plaintiffs that the assessing agency

1 in that case failed to levy a valid assessment, and therefore the levy was in essence a “special  
2 tax.” *Silicon Valley*, 44 Cal.4th at 441. A special tax, unlike a special assessment, can be levied  
3 without reference to peculiar benefits to particular individuals or property. *Id.* at 442 (“Indeed  
4 nothing is more familiar in taxation than the imposition of a tax upon a class or upon individuals  
5 who enjoy no direct benefit from its expenditure” [internal quotations omitted]). Thus, the  
6 critical difference between the two public financing mechanisms is that a special assessment  
7 must confer a special benefit upon the property assessed beyond that conferred generally. *Id.*  
8 For the reasons above, DCBID has failed to levy valid special assessments, rendering them  
9 special taxes. However, special taxes are subject to Article XIII C of the California Constitution,  
10 which requirements (specifically a two-thirds approving vote by the electorate) have not been  
11 met. In any case, RHF is a nonprofit organization which is exempt from taxes, including  
12 property taxes. *See* Cal. Rev. & Tax. Code § 214; Cal. Const., Art. XIII §§ 4 and 5; 26 U.S.C. §  
13 501. *See also* Exs. 3-6 to Request for Judicial Notice.

14 **IV.**

15 **CONCLUSION**

16 For the foregoing reasons, RHF requests that the Court invalidate DCBID’s assessments  
17 generally and specifically as applied to RHF’s properties.

18  
19 DATED: June 25, 2018

REUBEN RAUCHER & BLUM

20  
21 By:   
22 Stephen L. Raucher  
Attorneys Petitioners/Plaintiffs



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**PROOF OF SERVICE BY E-MAIL**

**STATE OF CALIFORNIA, COUNTY OF LOS ANGELES**

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is **12400 Wilshire Boulevard, Suite 800, Los Angeles, California 90025.**

On June 25, 2018, I served the foregoing document described as:

**PLAINTIFFS’/PETITIONERS’ OPENING BRIEF**

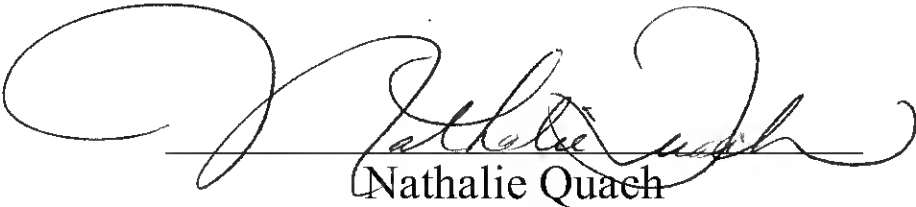
on all interested parties in this action by *emailing* a true copy thereof to counsel for all interested parties pursuant to the Consent to Electronic Service And Notice of Electronic Notification Address in accordance with California Rules of Court 2.251 as follows:

Daniel M. Whitley, Esq. Deputy City Attorney City Hall East 200 N. Main Street, Room 920 Los Angeles, CA 90012 Telephone: (213) 978-7786 Facsimile: (213) 978-7811 Email: <a href="mailto:daniel.whitley@lacity.org">daniel.whitley@lacity.org</a>  <i>Attorneys for City of Los Angeles</i>	Michael G. Colantuono, Esq Holly O. Whatley, Esq. Pamela K. Graham, Esq. Colantuono, Highsmith & Whatley, PC 790 East Colorado Boulevard, Suite 850 Pasadena, CA 91101 Telephone: (213) 542-5700 Facsimile: (213) 542-5710 Email: <a href="mailto:mcolantuono@chwlaw.us">mcolantuono@chwlaw.us</a> Email: <a href="mailto:hwhatley@chwlaw.us">hwhatley@chwlaw.us</a> Email: <a href="mailto:pgraham@chwlaw.us">pgraham@chwlaw.us</a>  <i>Attorneys for Downtown Center Business Improvement District Management Corporation</i>
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I am familiar with the office practice of Reuben Raucher & Blum for collecting and processing documents for delivery by E-mail. Under that practice, documents and email by Reuben Raucher & Blum personnel responsible for emailing are transmitted on that same day in the ordinary course of business. I emailed the above referenced documents, by agreement of the parties, to the address listed above.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on June 25, 2018, at Los Angeles, California.

  
Nathalie Quach